DOCUMENT RESUME

ED 370 171 EA 025 748

AUTHOR Wagner, Shelby E.
TITLE From Meet and Confer to Collective Bargaining to Collaborative Bargaining.
PUB DATE Jul 91
NOTE 32p.
PUB TYPE Reports - Research/Technical (143) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Collective Bargaining; Elementary Secondary Education; Federal Government; Labor Demands; *Labor Legislation; *Labor Problems; *Labor Relations; Public Schools; *School Districts; *Teachers
IDENTIFIERS California

ABSTRACT

For most of America's history, teachers have had few labor negotiating rights and little power to exert them. The National Labor Relations Act established the National Labor Relations Board and helped teachers gain more power in labor negotiations. Many worker rights gained from the 1930s through the 1970s were undermined by the increased complexity of labor negotiations and contracts and a new labor philosophy in the federal government during the 1980s. In California, public employee labor issues are governed by four statutes: the George Brown Act, the Winton Act, 1970 Winton Act, and the Educational Employment Relations Act. In the Corona-Norco School District in California, teachers' organizations negotiated for several years using the traditional style of bargaining. Marathon negotiation meetings were later used and resulted in multiyear teacher contracts. Many characteristics of the industrial union model are considered negative in collective bargaining, including its competitiveness and adversarial relationship. Alternatives to traditional labor negotiation stress focusing on the issues, lessening confrontation, examining common goals and interests, setting objective criteria, and seeking mutual gain. The Corona-Norco School District can employ some of these alternative negotiating methods in discussions with teachers. (Contains 25 references.) (JPT)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED 370 171

FROM MEET AND CONFER

TO

COLLECTIVE BARGAINING

TO

COLLABORATIVE BARGAINING

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

S. Wagner

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

CORONA-NORCO UNIFIED SCHOOL DISTRICT

Dr. Shelby E. Wagner

July 1991

BEST COPY AVAILABLE

EA 025 748

CHAPTER ONE

HISTORY OF LABOR RELATIONS

For the better part of American history, teaching was a casual occupation. Salaries were low and tenure short. Available information suggests that during most of the nineteenth century, the average tenure of a public school teacher was two to three years.[1]

In the colonial period, annual wages were comparable to those received by sailors and fishermen; by the time of the Civil War teachers' wages equaled those of semiskilled labor. It was not until the late nineteenth century that state legislatures began to require that public school teachers undergo at least a normal school education.[2]

Requirements for certificated positions continued to increase during the twentieth century. Similar changes were occurring in the private sector.

Power Era

Prior to the 1935 passage of the National Labor Relations Act, the U.S. had no statutory policies to guide or direct labor relations, except in the railroad industry. Government allowed labor and management to determine their own relationship. Unions existed only when they were able to convince the employer that it was less costly to recognize and bargain with the Union than not to do so. Prior to 1935, American labor relations was like a street fight; in the absence of a statutory framework, the power of the parties determined the outcome of labor relations.[3]

During the 1930's, a growing disillusionment with business lead to a conviction that the unfettered labor market was not serving social and economic needs. With 25% of the labor force unemployed and another 25% underemployed, the political base for the New Deal legislation was in place.[4]

Beginning of Rights Era

The passage of the Wagner Act, or the National Labor Relations Act, took the fight out of the street, and put it into the ring. The National Labor Relations Board became the referee with power to declare certain labor tactics unfair.[5]

1Collective Bargaining: Contemporary American Experience. Gerald Somers. Industrial Relation Research Association; Madison, Wisconsin (page 488)

2op. cit. (page 488)

3Daily Labor Report. January 17, 1990. Bureau of National Affairs; Washington, D.C. (page F-1)

4op. cit. (page F-1)

5op. cit. (page F-1)

Several other developments fostered the change from a power-based system of bargaining to a rights-based system. First, the establishment of the War Labor Board during World War II led to a ban on strikes. To prevent strikes over grievances, the Board introduced a system very similar to today's grievance arbitration system, with members of the War Labor Board functioning as arbitrators.[6]

Another development that helped usher in rights as a replacement for power was economic self-interest. Between 1945-1975, the U.S. enjoyed a robust period of economic good fortune where it sold all that it produced and, in large measure, dominated the world market for many essential goods and services. Stability in labor relations became more important than labor costs. Cost increases could quickly be forwarded to customers by raising prices, while shut-downs would result in lost revenue.[7]

A tacit deal was reached between labor and management which had its origins in the 1948 settlement between General Motors and the United Auto Workers. At that time, the parties negotiated "an annual improvement factor" of 3.2%. This represented the nation's real improvement in productivity during the first half of this century. This annual improvement factor became the anchor for future wage settlements. To protect these real gains from the ravages of inflation, the parties added a cost-of-living adjustment. This formula provided an "objective and equitable measure" that determined what was "right," with respect to bargaining outcomes. The mechanistic application of this criterion limited costly contests of "power" over wage increases.[8]

During the 1950's and 60's, highly centralized bargaining structures reinforced the formula approach to wage determination. Coordinated bargaining and pattern bargaining became the norm in most key industries; whatever was negotiated by one employer was replicated by his competitors. Labor costs were taken out of competition in most major, heavy-goods-producing industries. The dual standards of comparability and cost-of-living became the basis on which uniform settlements were determined. The major source of disputes was over inter-industry comparisons and projected rates of inflation, i.e., the standards by which rights would be weighed.[9]

Rights based bargaining produced rights-based agreements. Labor contracts grew from a few to hundreds of pages. Contract language was substituted for trust. Each side attempted to minimize risks by crafting reciprocal restraints. More and more the parties became hopelessly entangled in a web of rules and restrictions.[10]

6op. cit. (page F-1)
7op. cit. (page F-1)
8op. cit. (page F-1)
9op. cit. (page F-1)
10op. cit. (page F-2)

These lengthy agreements remain unique to North America. Only in the U.S. and Canada do contracts attempt to codify all workplace contingencies in the form of rights. The result is rigid, third-party dependency, status-quo preserving agreements which more closely resemble cease fire agreements among combatants than rational compacts for organizing work and working relationships.[11]

Decline of Rights Era

By 1970, those countries whose economy had been destroyed during World War II were fully recovered. Labor costs came back into the competitive equation because quality goods produced in the developed and developing countries around the world were on market shelves at lower prices.[12]

In 1981, the new Administration's policies were interpreted by employers to mean that they were free to engage in whatever practices or policies they chose, constrained or restricted only by the dictates of the labor market. Sensing that their power had increased enormously and realizing that the 1980-82 recession had created a vast pool of unemployed labor from which to draw, these employers returned to the exercise of pure power. They came to the table demanding substantial changes in contract language and reductions in wage and benefit packages. Unions, faced with the grim reality of their own unemployed members crossing picket lines to apply for jobs, focused their strategies on protecting and preserving what they had won in the past, instead of attempting new gains.[13]

All of these forces, plus the changing demographics of our workplaces and deregulation of some of our key industries, had undermined the old post-World War II system which had established rights as a means of determining equity and bargaining outcomes.[14]

11op. cit. (page F-2)
12op. cit. (page F-2)
13op. cit. (page F-2)
14op. cit. (page F-2)

CHAPTER TWO

HISTORY OF PUBLIC EDUCATION COLLECTIVE BARGAINING IN CALIFORNIA

Public agencies in California are governed by four public employee relations statues.

The George Brown Act

Prior to the passage of the George Brown Act in 1961 no state statue governed employer-employee relations. At the time it passed, the act was a compromise between employee organization agitation for a collective bargaining statute and anti-collective bargaining forces in public management.

The act granted all public employees in the state the right to join organizations of their own choice and required public agencies "to meet and confer" with representatives of employee organizations upon request.

Employee organizations could make presentations on all matters relating to employer-employee relations and employment conditions. However, a public agency was allowed after a hearing, to restrict organizational rights and activities of certain categories of employees engaged in the enforcement of state laws or local ordinances.

The Winton Act

The Winton Act of 1965 excluded personnel employed by school districts from the George Brown Act. As originally passed the Winton Act held the same "meet and confer" provisions as the Brown Act but it differed insofar as certificated employees were involved in two respects:

1. The act required meet and confer not only over salaries and working conditions but also meet and conferral over academic and curricular matters to the extent that they were within the discretion of the governing board.

2. In the event that more than one certificated employee organization requested recognition, the act required formation of a negotiating council.[15]

15The Management Guide to the Winton Act. Lee T. Peterson. School Research and Service Corporation; Fullerton, California. 1971. (page 6)

"...(The Winton Act) does not provide for a negotiating council to represent all certificated employees of the district, but a negotiating council composed of representatives of those employee organizations entitled to be represented on the negotiating council. Then, (the act) ... provided that the members of the negotiating council were to be appointed, according to the proportionate allotment, by the organizations representing certificated employees. The formula for determining membership on the negotiating council did not take into account the total number of certificated employees who were employed by the district.

In a major court case *California Federation of Teachers v. Oxnard Schools* 272 Cal. App. 2d (1969) the AFT sought a declaratory judgement that the Winton Act was invalid and unconstitutional and that the AFT affiliate had the right 1) to represent individual members in personal grievances, 2) to make presentations directly to the board and 3) to meet and confer directly with the board and the district. The appellate court found that the AFT affiliate had the right under state law to represent individual members in personal grievances and to make presentations directly to the board; however, in regard to meeting and conferring, the court said:

"The Winton Act is constructed upon the premise that all groups concerned with the subject matter (teachers and other school employees as well as administrators and school board members) are genuinely and primarily interested in the welfare of school and pupils and are willing, given appropriate means, to work harmoniously in order to secure the legitimate demands of school employees without detriment to the educational institutions. Surely the public school system in and of itself and its certificated personnel in particular, a group of people well educated, motivated and dedicated to work at modest salaries in the rewarding cause of educating the state's youth, constitutes an appropriate classification on the basis of education, training and temperament, to promote and adapt the negotiation council method of employee representation. By requiring certificated employees belonging to competing organizations to exercise representational rights through a negotiating council selected on a proportional basis, the act assures that a clearer statement of majority desires will be presented to the board and minimizes the danger that the board might be tempted to play minority organizations against one another."[16]

Winton Act - 1970

In August 1970 the legislature amended the Winton Act - amid claims of victory by both opponents and advocates of collective bargaining. The chief additions to the act were provisions requiring that agreements be placed in writing and that persistent disagreements be resolved through factfinding. In addition, the law required school boards to meet and confer "in a conscientious effort to reach agreement." The

---

16op. cit. (page 8)

coverage of the act was explicitly extended to cover community colleges. In two important instances the legislature restricted the law by changing the words "negotiating council" to "certificated employee council" and limiting the scope of meet and conferral to cover only procedures relating to educational instructional matters.[17]

Before the present day legislation adopted in 1975, it was clear that boards and their representatives had to sit down with employee organizations and attempt to reach an agreement with them. In doing this, however, two things were fundamental, 1) the district was not required to reach an agreement with the employee organization, the only requirement was to *attempt* to reach an agreement and 2) the duty to meet and confer did not interfere with the board's duty to take action *at any time*.

Scope of Meet and Conferral

The problem of what subjects are mandatory items for meet and conferral was a thorn in the side of administrators since the law was passed. The Winton Act stated in section 13085 that public school employers shall meet and confer with both certificated and classified employee organizations in regard to "all matters relating to employment conditions and employer-employee relations," and in section 13083 that "employee organizations shall have the right to represent their members in their employment relations with public school employers."[18]

Educational Employment Relations Act: Summary and Commentary

EERA was born out of legislative efforts in the early 1970's to pass a single, comprehensive statute covering all public employees in California. When S.B. 275 (Dills), the culmination of such efforts, seemed headed for certain failure during the 1975 legislative session, interest in education circles shifted to a second bill which focused only on school and community college districts. S.B. 160 (Rodda) contained many of the features of S.B. 275 and eventually gained the support of nearly all labor and management groups in the state as successive amendments were added to satisfy special interests.[19]

The decisions have shaped the law so that the parties now have a fairly clear idea of what is and is not permissible in areas such as conduct at the bargaining table, scope of bargaining, use of impasse procedures, participation in and response to strikes and other concerted activities, the union's duty to provide fair representation, employees' and unions' representation rights, conduct surrounding representation elections, and many other areas covered by the law.[20]

17op. cit. (page 8)
18op. cit. (page 9)
19Pocket Guide to the Educational Relations Act. Institute of Industrial Relations; University of California, Berkeley, CA. 1990. (page 3)
20op. cit. (page 4)

In 1977, the State Employees Employment Relations Act (SEERA) (Dills Act) was passed, followed the next year by Higher Education Employee Relations Act (HEERA). Both statutes are administered by Public Employees Relations Board (PERB) under an identical grant of authority and resemble EERA in most other aspects as well.

The Rodda Act (SB 160) of 1975, effective July 1, 1976, is the law under which California public school districts currently operate. Under the auspices of the five person PERB, that body now determines procedures, adopts rules and regulations, advocates unfair labor changes, determines unit representation, establishes procedures for mediation and fact finding among other detail. The body quickly became the legislative, judicial and executive branch of operations in mid 1976.

CHAPTER THREE

EMPLOYEE/BOARD OF EDUCATION NEGOTIATIONS

Prior to collective bargaining, a proposal regarding salary, fringe benefits and working conditions for employees in the Corona/Norco School District, was developed by the Certificated Employees Council (CEC) and presented to the Superintendent and the Board of Education for their consideration. The council would "meet and confer" with representatives of the Board (including Board members themselves) to discuss and resolve issues. Administration and teachers were originally represented together by the CEC, but by 1970, administration was meeting separately with the Superintendent.

The teachers organized into two groups by the early 1970s. The Corona-Norco Teachers Association (CNTA) was the largest group and was primarily based in the Corona part of the District. Another organization, the Corona-Norco Education Association (CNEA), was centered in the Norco area. With the advent of collective bargaining, CNTA was chosen as the exclusive representative for teachers. The California School Employee Association (CSEA) was selected as the Classified representative organization. Selection was accomplished through an election process.

Negotiations with both organizations used the "traditional" style of bargaining for several years. Early contracts were developed from "master" contracts provided by CTA and CSEA. Teacher and classified employee negotiators relied heavily on these models. At the beginning of the collective bargaining process, John Harper represented the Board of Education. Mr. Harper was in the process of completing his law degree and negotiated for the District first as an employee, and later as a representative of his law firm.

In 1980 the District experienced a classified employee strike. The strike lasted eight (8) days. Employee support for the strike was mixed and many did not go out, or returned to work in the middle of the strike period. The teacher organization did not actively support the classified employee walk out.

In June of 1981, Lee Pollard was appointed to the position of Director of Employer/Employee Relations. That summer, the idea of marathon negotiations was discussed. An agreement was reached on the format and the first marathon meetings were held in September of 1981. Successful marathon negotiations were held from 1981 to 1986 (six consecutive years). The meetings were held in Palm Springs.

CSEA negotiations after 1981 involved several multi-year contracts with roll overs. In years when the entire contract was not negotiated a one (1) day marathon session was held to resolve re-opener issues. Typically this session took place in Palm Springs following the conclusion of the CNTA/District agreement.

In 1987 marathon negotiations were held in Palm Springs between officials of the District and CNTA, but a settlement was not achieved. Both teams came back to the District and resumed "traditional bargaining". Settlement was reached on January 15, 1988. In 1988, without the marathon process, a full return to the traditional process resulted in a settlement on January 15, 1989. The 1989 contract was settled on October 30, 1989.

In 1990, Dr. Shelby Wagner became the spokesperson for the Board of Education. The 1990 certificated contract was settled on May 21, 1991.

CSEA negotiations were conducted in Palm Springs during the fall of 1990. While no settlement was reached, one additional meeting in January secured the agreement CSEA is currently in the third year of a three year agreement. Re-openers included salary and fringe benefits. Also, this years agreement allows for the re-opening of any two articles with the exception of Binding Arbitration.

CHAPTER FOUR

COLLECTIVE BARGAINING FOR THE 21st CENTURY

The industrial union model was "borrowed" by educators from the private sector at the outset of collective bargaining, and it still appears to be prevalent in California school districts. It is characterized by official bargaining teams; formal exchange of initial positions within a narrowly defined scope of bargaining; subsequent moderation of the positions until a compromise settlement is reached;face-to-face negotiations led by chief negotiators who do most or all of the talking; and the regular use of caucuses for consultation among members of a team.[21]

While many districts may effectively use traditional industrial union bargaining, it is widely perceived to be based on an adversarial posture in which each side attempts to prevail over the other.

Experts generally describe prior bargaining to have been full of distrust, with each side trying to gain the advantage by carefully controlling information and introducing "throwaway" bargaining chips. Bargaining teams are frequently led by outside negotiators who are skilled in bargaining strategies and tactics, but are also more likely to be regarded with suspicion by the other side. The process typically includes informational picketing or other concerted activities intended to demonstrate teacher solidarity, and administrations and boards are often perceived as deliberately deceiving the bargaining unit to gain a negotiating advantage.

There are some critical assumptions under the industrial traditional bargaining concepts. They include:

1. Traditional bargainers are satisfied with settlements with winners and losers because they feel the nature of bargaining is competitive. In a sense, traditional bargaining is a part of the competitiveness of America culture.

2. Traditional bargainers believe that any damage to their relationship caused by bargaining can be repaired later, or is something that "goes with the territory."

3. Traditional bargainers define success as having achieved a settlement that favors their side. The satisfaction of both parties is not expected.

4. Traditional bargainers see their opponent's dissatisfaction with the settlement as indicating that the settlement favored them. Or said another way: If your opponent is too happy, you gave more than you needed to.

21Transforming Principals Into Practice. D.L. Landen. Landen, Wills and Associates. (page 70.)

Under traditional bargaining, the following often occurs:

1. Issues become exaggerated proposals: The parties separately converting issues into proposals or positions (sometimes called demands) which have been exaggerated beyond what the proposing party believes they will need or get. Example: 25% wage increase: fully paid health insurance; equally divided overtime.

2. Proposals argued: Proposals/positions are presented in a series of meetings with supporting arguments, power plays, intimidation, manipulations, etc.

3. Settlement based on Compromise: At a point in between their opposing positions, the parties achieve settlement based on relative power, circumstances, and trade-offs.

Differences

There are, needless to say, discrepancies between labor and management. Culture Clash in Labor Relations, shown on the next page, graphically depicts the differences. The roles played in organizational cultures is depicted in Chart Two.

The traditional method of bargaining, citing what people want, what people expect, what actually happens during negotiations, and what people believe happen is clearly presented in the next chart.

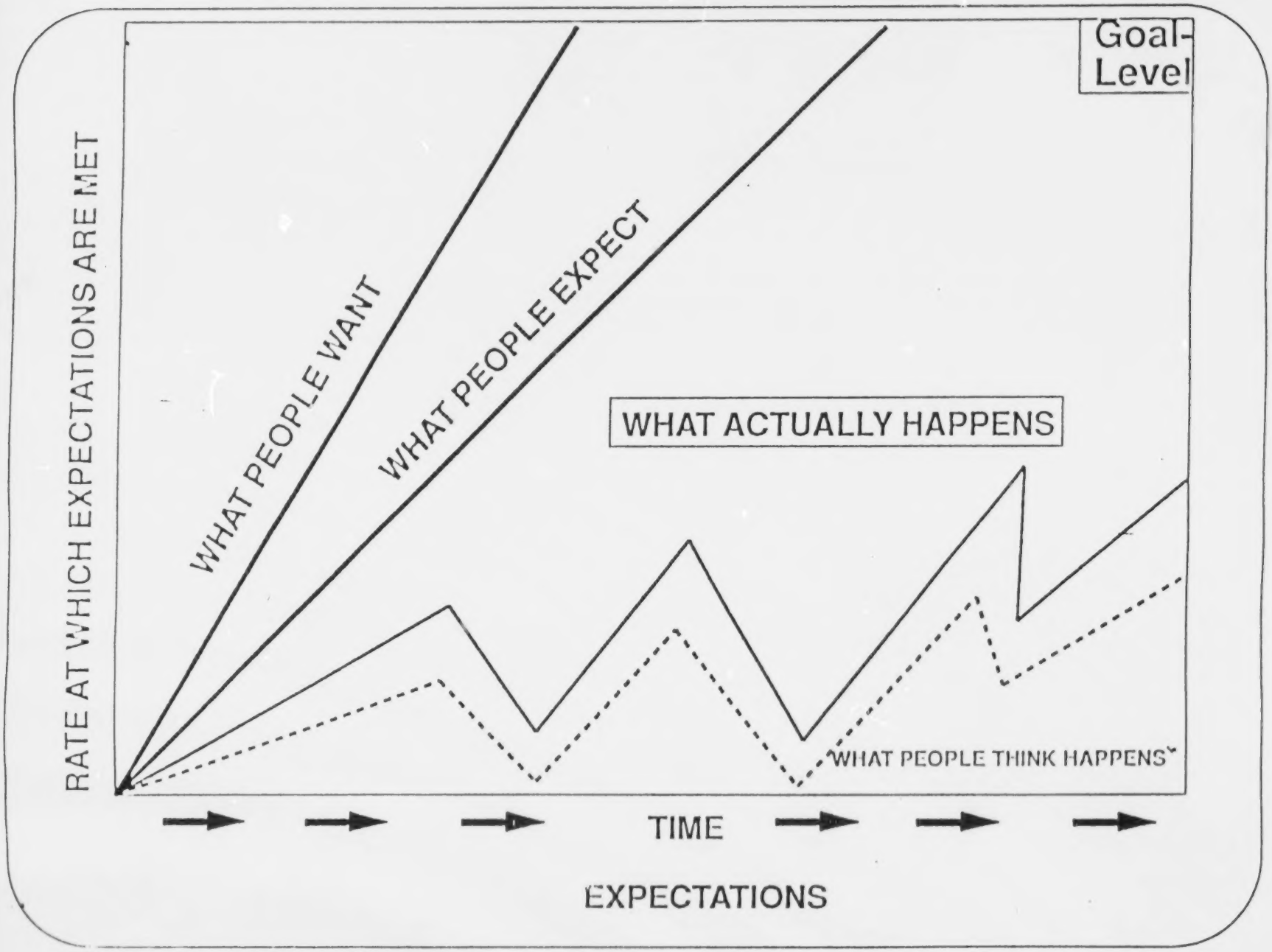
CULTURE CLASH IN LABOR RELATIONS

ATTRIBUTES OF LABOR	ATTRIBUTES OF MANAGEMENT
Egalitarian	Hierarchical
Democratic, "By the People"	Managed, "By the Facts"
Collective, Brotherhood	Individualistic, Competitive
Seniority	Performance
Past/Precedent	Now/What Works
Rules and Rights	Flexibility and Productivity

11a

ROLE OF ORGANIZATION CULTURE

- Organization culture may help or hinder the movement to cooperative labor-management relations.
- Adverse cultures are reactive, risk-averse, autocratic, change-resistant, blaming.
- Favorable cultures are pro-active, willing to experiment, tolerant of ambiguity, able to learn, focused on long-term improvement.


Goal-
Level
RATE AT WHICH EXPECTATIONS ARE MET
WHAT PEOPLE WANT
WHAT PEOPLE EXPECT
WHAT ACTUALLY HAPPENS
WHAT PEOPLE THINK HAPPENS
TIME
EXPECTATIONS

11c

FROM THERE TO HERE: TRENDS

Any organization which is not changing at the same rate and in the same direction which the larger society is changing is doomed for failure.

Classes at the major universities have long taught the need to study motivational theorists, including Maslow[22], Herzberg[23], McGregor[24], Likert[25] and more recently Ouchi[26] and Bennis, among others. Collectively, although with some variations, these theorists base their thoughts on the premise that employees are motivated not only be the salary and working conditions of their job, but also by the meaningfulness of the work they perform and the level of responsibility and involvement they experience.

Public school districts are sharing in this movement toward a more cooperative and collegial practice, particularly in formal collective bargaining processes. In the remainder of the chapter, various concepts and practices currently in use will be explained. The final chapter will address a proposed practice.

In 1981 Roger Fisher and William Ury of the Howard Negotiation Project combined to write a book, "Getting to Yes"[27] that presented a clear, concise and proven method of negotiation. The principles involved could be utilized to resolve conflict in any given situation, from disagreements with spouse, children, neighbors, bosses, landlords, tenants, employees, and even diplomats. Indeed Fisher, who works with the federal government in problem solving, played a major role in securing the release of American hostages in Iran, solving the Soviet Union/Afghanistan situation and other world conflicts.

Very simplistically, Fisher's premise was do not bargain over positions. Arguing over positions produces unwise agreements as more attention is paid to positions; less attention is devoted to meeting the underlying concerns of the parties. Arguing tends to endanger the ongoing relationship. Fisher points out that being nice is not the answer as you will be overrun. The key is to separate the people from the problem, then focus on interests, not positions. Fisher advocates generating a variety of possibilities before deciding what to do and insist that the result be based on some objective standard.

22A Theory of Human Motivation. Abraham Maslow. Psychological Review, 1943.

23The Motivation to Work. Frederich Herzberg. John Wiley and Sons Publishers; New York. 1959.

24The Human Side of Enterprise. Douglas McGregor. McGraw-Hill Publishers; New York. 1960.

25The Human Organization. Rensis Likert. McGraw-Hill Publishers; New York. 1967.

26Theory Z: How American Business Can Meet the Japanese Challenge. Addison-Wesley Publishers; Reading, Massachusetts. 1981.

27Getting to Yes. Roger Fisher and William Ury. Houghton-Mifflin Company; Boston, Massachusetts, 1981.

PROBLEM Positional Bargaining: Which Game Should You Play?		SOLUTION Change the Game -- Negotiate on the Merits
SOFT	HARD	PRINCIPLED
Participants are friends.	Participants are adversaries.	Participants are problem-solvers.
The goal is agreement.	The goal is victory.	The goal is a wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	Separate the people from the problem.
Be soft on the people and the problem.	Be hard on the problem and the people.	Be soft on the people, hard on the problem.
Trust others.	Distrust others.	Proceed independent of trust.
Change your position easily.	Dig in to your position.	Focus on interests, not positions.
Make offers.	Make threats.	Explore interests.
Disclose your bottom line.	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer: the one they will accept.	Search for the single answer: the one you will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on objective criteria.
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reasons; yield to principle, not pressure.

School districts that have changed from the industrial model as explained previously have done so for a variety of reasons. A level of maturity, or a level of sophistication built on trust have occurred in some districts. A hostile climate between employees and employers have caused some change. Changes in leadership at the union and district level have resulted in change in some instances.

A quick review of some of the models follows.

TRADITIONAL (INDUSTRIAL) MODEL

- Based on positions of the negotiations, not on the issues.
- Each side looks out for its own interests.
- Opening proposals are at extremes, each sides hope to reach agreement somewhere in between.
- Concept of winners and losers.
- One side gains at the expense of the other.
- One spokesperson for each side.
- Frequent caucuses.
- Communication to the constituents are frequently in terms of conflict and divisiveness

EXPEDITED BARGAINING

- Time is restricted to usually no more than two or three weeks.
- Ground rules accepted in advance.
- Number of issues each side may bring to the table is limited.
- Agreement as to what happens if agreement is not reached.

WIN/WIN (GOLDABER) APPROACH

Developed by a Social Psychologist from New York University (the late Irving Goldaber), the process is often called the Goldaber plan.

- The facilitator guarantees completion of negotiations within 30 days.
- Bargaining is done by only key personnel from management and union.
- Board of Education plays major role.
- Conflicts are put on table and discussed by neutral facilitator
- Issues are grouped into four areas: compensation and benefits, rights and responsibilities, working conditions, miscellaneous.
- Committees work on the issues.
- Committees work for three weeks. Contract writing committee writes the contract.
- Major disagreements are resolved in weekend meetings.
- Trust is a prerequisite.

STRATEGIC BARGAINING

- Review past and present perceptions of bargaining.
- Share the perception with the other side as they will with you.
- Look at the next 5-10 years of givens, known facts, challenges, problems, opportunities.
- Develop joint goals and objectives.
- Establish joint study teams.
- Negotiate toward the goals.
- Develop a clear plan for communicating, implementing and monitoring the agreement.
- Evaluate and renew goals periodically.

PRINCIPLED NEGOTIATIONS (FISHER-HARVARD NEGOTIATION PROJECT)

- Separate people from the problem.
- Allow the other side to let off steam, acknowledge emotions, use symbolic gestures to mend previously ill-feeling.
- Focus on interests, not positions.
- Both parties focus on ways to solve a problem.
- Invent options for mutual gains.
- Evaluate options with standards, not on who has the power.
- Balance emotion with reason.
- Understand and consult before decisions are made.
- Be reliable and be open to persuasion, both giving and receiving.
- Accept the other side as worthy.

COLLABORATIVE BARGAINING PITFALLS

There are several concerns that parties may have in any collaborative bargaining model.

Some personnel, be it members of management or the union, may find it difficult, philosophically, to support a concept wherein you are working with the perceived enemy. This may be especially true of older personnel or those who have understood and worked in the traditional or industrial model concepts. Also, especially in the union members eyes, a collaborative approach may affect membership into thinking that the union is not making significant progress in accomplishing union goals. Another pitfall is that in case of failure, more distrust and conflict is created than has ever occurred in the district previously. Some may want the process to fail.

There are those who also find that the term "collaborative" is negative. In world history, collaboration has been seen as helping the enemy, usually in time of war. Many people prefer to use the term "Principled" or "Interest-Based" Bargaining.

COLLABORATIVE BARGAINING ADVANTAGES

There are several advantages to a collaborative system, whatever the name we choose to give it.

There are some that say a collaborative approach improves public confidence in the educational system or district wherein one lives. The press coverage does not report the negatives because in a good working district there are few to report. Hence, the news that is being printed is positive. It is also felt that the relationship between the different groups, i.e. Management and union, is improved.

Creative solutions to difficult problems can be accomplished when all people are working on the problem and not working on the problem and other groups. A long-term vision with district goals can be developed.

Looking at problems through the eyes of the "other" side allows one to see the difficulties of the other. Such approaches often bring people closer together, with the result bringing a resolution to the problem, real or perceived.

CHAPTER FIVE

A PLAN FOR THE DISTRICT

As reviewed, there are many plans in which school districts may choose from if they are interested in a new approach. All plans have common themes - training, in-service workshops, conference attendance, reading. Some plans bring in outside facilitators to assist in bargaining once the training has been completed.

A list of trainees, concepts, fees and training dates can be provided. Training usually will take from two to five days and involves members' of the unions as well as the Superintendent, management personnel and, in some cases, Board of Education members. Costs range from several hundred dollars to several thousand dollars.

Nothing precludes the District from developing its own format, utilizing some or all of the concepts depicted thus far in the report.

To succeed, any plan will need to be built on:

1. Mutual respect
2. Honesty
3. Willingness to succeed
4. Flexibility
5. Support by constituents and Board of Education
6. Trust
7. Understanding of each other's political structures
8. Realistic expectations
9. Common Exchange of Information
10. Attitudes
11. Expressed desire and commitment to succeed
12. Key people assume ownership
13. Acknowledge that mistakes do and will occur and admit it without losing face
14. Take small, but recognizable steps to build trust
15. Define what, if any, problems cannot be resolved immediately

RECOMMENDATION

Having looked at the various models, the staff recommends the Board of Education consider the PERB model as detailed in the following paragraphs. If this meets with the Board of Education approval, Dr. Wagner will contact (CFIRE), the agency in charge of the training, for the purpose of registering for the first available training date.

Dr. Wagner will propose the joint training and PERB model to the employee organization.

The California PERB and regional and state level labor and management groups have developed an intensive workshop to assist public school district/union teams to improve their collective bargaining relationship. Beginning in the summer of 1989 with a grant from the Stuart Foundations, union and employer representatives jointly agreed on the goal and objectives of the workshop and, with the assistance of expert trainers and consultants, designed the initial curriculum. Supported by additional grant moneys from the Stuart and the Hewlett Foundations, eight pilot workshops were conducted in the next 12 months.

Curriculum Committee: An oversight committee was formed to govern the project. Its members include representatives of:

Association of California School Administrators (ACSA)
California Federation of Teachers (CFT/AFT)
California School Boards Association (CSBA)
California School Employees Association (CSEA)
California Teachers Association (CTA/NEA)
School Employers Association (SEA)
Service Employees International Union (SEIU)

as well as the California PERB, the California Mediation and Conciliation Service, Bill Kay of Whitmore, Kay and Stevens, and expert trainers Jan Abbott of the Ross Consulting Group (Fremont, CA), Mark Smith of Conflict Management, Inc. (Cambridge, MA), and Fran Chamberlain of Napa County Office of Education. The Curriculum Committee has created the training program and guides its every step. All decisions regarding course offerings, admittance of district/union groups, selection of trainers and curriculum revisions are made jointly by Curriculum Committee members. Janet Walden of the California PERB is the project manager.

Workshop Goal: To facilitate the ability of participants to produce measurable improvement in the relationship in a district between unions and management within a collective bargaining framework.

Workshop Objectives:

1. Become familiar with attitudes, skills and practices which promote effective labor-management relationships.

2. Become familiar with and practice essential elements of effective negotiations.

3. Become familiar with and practice effective communications, problem solving and consensus building.

4. Identify sources of conflict and distrust, and develop strategies for building trust and effectively managing conflict.

5. Working as a team from each district, develop a plan to improve their relationship.

Training Content and Delivery:

The intensive course utilizes lecture, case studies, negotiations exercises, physical team tasks, small and large group discussions and problem solving sessions to achieve its objectives. Negotiation and relationship skills based on Roger Fisher's *Getting to Yes* and *Getting Together* are taught. Expert trainers and training materials from the Harvard Negotiation Project and the Ross Consulting Group are an integral part of the course.

Members of the Curriculum Committee and other representatives of unions and school employers also serve as trainers and group facilitators at the intensive workshop.

The course is residential, usually conducted at a hotel or campus facility. Due to the receipt of grant funds, the cost of the workshop has been held to $900 - $985 per participant (which includes meals and lodging for the five days.)

Follow-Up Consultation/Facilitation:

Each district/union group that completes the course is assigned a neutral follow-up consultant/facilitator (a staff member of the PERB or the State Mediation Service) who works with them in whatever capacity is needed. The role of the follow-up consultant is jointly worked out with the two parties. Follow-up can include such services as general consultation and trouble-shooting, actual facilitation of problem solving sessions, and/or provision of orientation and training to key persons in the district who did not attend the inservice.

Success of the Program:

A comprehensive evaluation of the impact of the intensive training and follow-up assistance is underway. Reports to date from district/union teams that have completed the training contain high praise for the effectiveness of the program. In fact, such interest in the project has been generated that a considerable waiting list now exists for entry into future courses.

Elements of the program most often cited as key factors in its success include:

*The joint sponsorship and participation of labor and management and PERB

*The high quality of the curriculum and the trainers

*The flexibility of the curriculum, which is adjusted to meet the needs of each individual group

*The provision of follow-up assistance

Dr. Wagner would be happy to meet with any of you to discuss any issue on this topic.

BIBLIOGRAPHY

Books

1. Aaron, Benjamin. *Public Sector Bargaining*. The Bureau of National Affairs; Washington, D.C. 1979.

2. Addison-Wesley Publishers. *Theory Z: How American Business Can Meet the Japanese Challenge*. Reading, Massachusetts. 1981.

3. Fisher, Roger. *Getting Together*. Houghton-Mifflin Company; Boston, Massachusetts. 1988.

4. Fisher, Roger and William Ury. *Getting to Yes*. Houghton-Mifflin Company; Boston, Massachusetts. 1981.

5. Herzberg, Frederich. *The Motivation to Work*. John Wiley and Sons Publishers; New York. 1959.

6. Institute of Industrial Relations. *Pocket Guide to the Educational Relations Act*. University of California, Berkeley. 1990.

7. Likert, Rensis. *The Human Organization*. McGraw-Hill Publishers; New York. 1967.

8. McGregor, Douglas. *The Human Side of Enterprise*. McGraw-Hill Publishers; New York. 1960.

9. Peterson, Lee T. *The Management Guide to the Winton Act*. School Research and Service Cooperation; Fullerton, California. 1971.

10. Somers, Gerald G. *Collective Bargaining: Contemporary American Experience*. Industrial Relations Research Association Series. Bloomington, Illinois. 1980.

11. University of California, Los Angeles. *The Rodda Act*. 1976.

12. Warner, Kenneth O. *Public Management at the Bargaining Table*. Public Personnel Association. Chicago, Illinois. 1967.

PUBLICATIONS, PERIODICALS

1. Abbott, Jan. "New Approaches to Collective Bargaining and Work-place Relations - Do They Work?" *Ross Consulting Group.* Fremont, California. 1989.

2. Barber, Stephen. "The Emerging Paradigm in Public Sector Labor Relations." *California Public Employees Relations.* 1988.

3. Bureau of National Affairs; Washington, D.C. "Daily Labor Report." January 17, 1990.

4. Dills, Ralph C. and Rebecca Q. Morgan. "Teacher Strike: There Has To Be a Better Way." *Los Angeles Times.* May 31, 1989.

5. Glaser, John. "Alternative Labor Relations Practices: A Second Look." *Thrust.* February-March 1989.

6. Glaser, John. "Planning for Positive Change in Labor-Management Relations." *California Public Employees Relations.* No. 80. March 1989.

7. Kerchner, Charles T. "Teacher Professionalism Through Labor Relations." *Policy Briefs.* 1986.

8. Landen, D.L. "Transforming Principals Into Practice." *Landen, Wills and Associates.* 1983.

9. Maslow, Abrachan. "Theory of Human Motivation." *Psychological Review.* 1943.

10. Mitchell, Douglas E. Charles T. Kerchner. "Teaching Reform and Union Reform." *The Elementary School Journal.* March 1986.

11. NEA. "Collective Bargaining: A Critical Appraisal." *NEA Research.* West Haven, CT. 1991.

12. Rodman, Blake. "Hopes for a Team of Fellow Professionals: Some Teacher Locals and School Officials are Reaching for Collaborations Beyond Bargaining." *Education Week.* 1988.

13. U.S. Department of Labor. "Cooperating for the Future: A New Dimension in Labor-Management Relations." *Bureau of Labor-Management Relations.* 1987.